

Message Text

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PAGE 01 MELBOU 01110 210729Z
ACTION EA-12

INFO OCT-01 ISO-00 JUSE-00 EB-08 /021 W
-----005111 220156Z /70

R 210532Z JUL 78
FM AMCONSUL MELBOURNE
TO USDOC WASHDC
SECSTATE WASHDC 4521
INFO AMEMBASSY CANBERRA
AMCONSUL SYDNEY
AMCONSUL BRISBANE
AMCONSUL PERTH

UNCLAS MELBOURNE 1110

STATE PASS TO JUSTICE - ATTORNEY GENERAL'S OFFICE

E O 11652 N A
TAGS EIND, BEXP, AS
SUBJ: COMMERICAL POLICY: REQUEST FOR INFORMATION AND GUIDANCE ON
APPLICABILITY OF ANTI-TRUST STATUTES TO EXCLUSIVE AGREEMENTS
BETWEEN U.S. EXPORTERS AND THEIR OVERSEAS AGENTS

REFS A STATE 95673 B STATE 124590

1. POST ECONOFF JULY 19 HAD LENGTHY DISCUSSION WITH DIRECTOR OF
ONE OF AUSTRALIA'S LARGER INTERNATIONAL TRADING HOUSES, A REPUTABLE
WELL-ESTABLISHED MELBOURNE-BASED FIRM WHICH SUCCESSFULLY REPRESENTS
ABOUT TWO DOZEN LARGE AMERICAN MANUFACTURERS IN WIDE VARIETY
OF INDUSTRIES: AVIATION, TEXTILES, CHEMICALS, ETC. DIRECTOR, WHO IS
FRIENDLY TO U.S. AND WELL DISPOSED TO SEEK MORE AGENCIES FOR U.S.
EXPORTS, EXPRESSED DEEP CONCERN OVER WHAT HE UNDERSTANDS TO BE RECENT
AMENDMENT TO U.S. LAW OR CHANGE OF POLICY WHICH NOW, ACCORDING TO SOME

OF HIS FIRM'S U.S. PRINCIPALS, PROHIBITS HIS COMPANY FROM HAVING
EXCLUSIVE RIGHT TO REPRESENT U.S. PRINCIPAL IN AUSTRALIAN MARKET.
THIS APPEARS TO BE PARTICULARLY SERIOUS PROBLEM TO HIM IN SALE AND
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PAGE 02 MELBOU 01110 210729Z

DISTRIBUTION OF CERTAIN CHEMICAL PRODUCTS. RECENTLY HE BECAME AWARE
THAT ANOTHER TRADER HAD ENTERED THIS MARKET WITH A SMALL SHIPMENT
PURCHASED DIRECT FROM HIS U.S. PRINCIPAL AT SAME PRICE HE HAS BEEN
PAYING, AND SOLD AT CUT RATE. U.S. PRINCIPAL HAD ADVISED HIM THAT
IT WAS POWERLESS TO REFUSE TO SELL BECAUSE EXCLUSIVE ARRANGEMENTS
WITH OVERSEAS AGENTS WERE NOW ILLEGAL UNDER ANTI-TRUST LAWS.

2. DIRECTOR POINTED OUT THAT HIS COMPANY NORMALLY EXPECTED TO SPEND ITS OWN TIME, MONEY AND MANPOWER TO DEVELOP MARKETS FOR NEW PRODUCTS, IN EXPECTATION IT WOULD RECOUP ITS INVESTMENT BY EXCLUSIVE REPRESENTATION. IF HOWEVER, ANY OTHER TRADER COULD FREELY EXPLOIT THE MARKET HIS FIRM HAD DEVELOPED BY RESEARCH, ADVERTISING, TECHNICAL MARKETING AND PROMOTION FOR AN AMERICAN PRODUCT, AND UNDERCUT HIS FIRM'S PRICES (WHICH HAD TO FACTOR IN THESE MARKETING COSTS) IT WOULD DESTROY HIS FIRM'S INCENTIVE TO REPRESENT U.S. EXPORTERS. IT SHOULD BE NOTED THAT, ACCORDING TO THIS SOURCE, EXCLUSIVE REPRESENTATION AGREEMENTS FOR AGENTS AND/OR DISTRIBUTORS ARE LEGALLY PERMISSIBLE AND IN FACT WIDELY USED BY THIRD COUNTRIES (E G, JAPAN, UK, WEST GERMANY) EXPORTING TO AUSTRALIA.

3. ACTION REQUESTED: POST REQUESTS COMMERCE/STATE PROVIDE IT WITH GUIDANCE ON CURRENT U.S. LAW AND POLICY ON EXCLUSIVITY IN U.S. PRINCIPALS' ARRANGEMENTS WITH THEIR OVERSEAS AGENTS. SUGGEST THAT TREATMENT OF THIS SUBJECT BY CIRCULAR AIRGRAM TO ALL COMMERICAL INTERESTS POSTS MIGHT BE EXTREMELY USEFUL. POST WOULD WELCOME TEXTS OF PERTINENT STATUES, OPINIONS, REGULATIONS, INTERPRETATIONS.

4. MORE IMPORTANTLY, POST ALSO SUGGESTS THAT IF SITUATION IS AS DESCRIBED BY ITS CONTACT THIS IS A SERIOUS DISINCENTIVE TO WELL-ESTABLISHED OVERSEAS FIRMS WHO HAVE THE ABILITY AND INTEREST TO DEVELOP NEW MARKETS FOR U.S. EXPORTS. POST IS AWARE THAT NATIONAL EXPORT POLICY TASK FORCE WAS TO CONSIDER, INTER ALIA, ANTI-TRUST POLICY, AND THAT GOVT REGULATIONS ARE DOMAIN OF ONE OF THE

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PAGE 03 MELBOU 01110 210729Z

FIVE TASK FORCE WORKING GROUPS (REFTELS). IF NOT ALREADY CONSIDERED, POST HOPES APPROPRIATE GROUP WILL EXAMINE THIS QUESTION OF PRINCIPAL-AGENT RELATIONS TO DETERMINE WHETHER SERIOUS PROBLEM EXISTS AND IF SO WHETHER SOME REMEDIAL ACTION IS POSSIBLE OR DESIRABLE.

5. POST ECONOFF DISCUSSED THIS MESSAGE WITH MR MICHAEL KELLY, COUNSELOR TO THE ATTORNEY-GENERAL, DURING THE LATTER'S VISIT TO MELBOURNE THIS WEEK. MR KELLY SUGGESTED THAT STATE PASS THIS MESSAGE TO THE OFFICE OF THE ATTORNEY GENERAL FOR HIS ATTENTION WHEN HE RETURNS TO WASHINGTON.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENTS, INFORMATION EXCHANGE, RULES, ANTITRUST, EXPORTERS
Control Number: n/a
Copy: SINGLE
Draft Date: 21 jul 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978MELBOU01110
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780301-0298
Format: TEL
From: MELBOURNE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780734/aaaabchh.tel
Line Count: 107
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: b7ea146f-c288-dd11-92da-001cc4696bcc
Office: ACTION EA
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 29 mar 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1927553
Secure: OPEN
Status: NATIVE
Subject: COMMERICAL POLICY: REQUEST FOR INFORMATION AND GUIDANCE ON APPLICABILITY OF ANTI-TRUST STATUES TO EXCLUSIVE AGREEMENTS BETWEEN U.S. EXPORTERS AND TH EIR OVERSEAS AGENTS
TAGS: EIND, BEXP, AS
To: COM STATE
Type: TE
vdkgvwkey: odbcc://SAS/SAS.dbo.SAS_Docs/b7ea146f-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014